HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

W.P. No.13970 of 1998

21.6.2007

Between

Ch.Jaganmohan Reddy ..Petitioner

AND

The Registrar of Cooperative Societies, Government of Andhra Pradesh, Hyderabad and others ..Respondents

:: JUDGMENT ::

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.13970 of 1998

The petitioner who was working as a Paid Secretary of Primary Agricultural Cooperative Society, feels aggrieved by the orders passed by the Special Category Deputy Registrar and District Cooperative Officer, Khammam through his proceedings dated 5.12.1997, and also by the proceedings dated 10.2.1998 passed by the same Officer. The case of the petitioner is that through the impugned order passed on 5.12.1997, the District Cooperative Officer had ordered for conducting an enquiry under Section 51 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act') duly entertaining a complaint lodged by a couple of members of the Managing Committee of a Cooperative Society making reckless allegations against the petitioner. Therefore, the learned counsel for the writ petitioner would urge that the exercise carried out in terms of Section 51 of the Act is an illegal exercise inasmuch as no enquiry could be ordered unless the complaint is made by not less than one-third of the members of the Managing Committee of the Society and in the instant case, the total strength of the members of the Managing Committee is 13 whereas the complaint entertained which formed the basis for ordering enquiry under Section 51, is lodged only by the two members of the Managing Committee. Therefore, the impugned

order is clearly illegal. The learned counsel for the writ petitioner would also urge that the enquiry under Section 51 of the Act is required to be completed within a period of four months which has not been so accomplished and therefore on this count also, the impugned order is liable to be set aside.

The learned Government Pleader for Cooperation would urge that the Registrar in the instant case had ordered for an enquiry to be conducted into the constitution, working and financial condition of the Society and such an enquiry has been ordered by him on his own motion and that the Registrar had treated the complaint lodged by a couple of members of the Managing Committee of the Society as some piece of information for the purpose of looking into and examining the working of the Society itself and therefore, no exception need be taken thereto. The learned Government Pleader would also urge that the enquiry ordered under Section 51 of the Act is essentially directed against the constitution and functioning of the Society and that it has got nothing to do with the conduct of the writ petitioner herein. If the enquiry under Section 51 ultimately reveals that there was *prima facie* material indicating the complicity of the writ petitioner, in such an event, a regular enquiry under Section 60 of the Act would follow where at, the individual(s) would be provided with a fair and reasonable opportunity before final conclusions are drawn holding such individual(s) as responsible or accountable for the lapses committed and that such a stage has not reached where the conduct or the involvement of the writ petitioner is to be determined and therefore, this is not the stage at which the present writ petition could be entertained. This apart, the

learned Government Pleader also pointed out that the enquiry ordered under Section 51 is liable to be concluded within a period of four months and for any reason, if the same could not be so concluded, power is available with the Registrar for extending the time limit by a further two months' period and therefore, the subsequent order passed by him on 10.2.1998 is equally unexceptionable.

The learned Government Pleader has also urged that a perusal of Section 60 reveals that a detailed enquiry will follow where the enquiry under Section 51 reveals the implication of misconduct on the part of any individual. Therefore, at the stage of enquiry under Section 51, perhaps, the writ petitioner need not entertain any misapprehension that he would be penalised one way or the other.

The learned Government Pleader had also placed reliance upon a judgment rendered by this Court in **Khadernawazkhanpet Society vs. Collector, Nellore**[1].

Before I proceed further, it will be relevant to have a closer look at the provisions contained in Sections 51 and Section 60 of the Act. They read as under:

> "**51. Inquiry:**-- The Registrar, may of his own motion and shall, on the application of a society to which the society concerned is affiliated, or of not less than one third of the members of the Committee, or of not less than one fifth of the total number of members of the society, hold an inquiry or direct some person authorised by him by an order in this behalf to hold an inquiry into the constitution, working and financial condition of a society. Such inquiry shall be completed within a period of four months and the report of inquiry along with the findings of the Registrar thereon

shall be communicated to the managing committee of the society. It shall be the responsibility of the managing committee to place the inquiry report before the General Body or Special General Body convened for the purpose for its information, within a period of one month from the communication of the inquiry report by the Registrar. The Registrar shall be competent to initiate action under the provisions of this Act, if the committee fails to take action as aforesaid:

Provided that notwithstanding anything contained in this Act and the Rules made thereunder, the bye laws of a society and the action of the society in placing the inquiry report along with the findings of the Registrar, the Registrar shall not precluded from taking follow up action as may be required on the basis of inquiry report:

Provided further that such action shall not be nullified even if the General Body of the Society passes a resolution negativing the findings of the inquiry:

Provided also that the Registrar may for reasons to be recorded in writing extend the period of four moths for completion of inquiry for a further period not exceeding two months. Explanation:-- For the purposes of this section, “Managing Committee” includes a Committee constituted under Section 31(1)(a), and a person-in-charge appointed under Section 32 (7)(a) and also a special officer appointed under Section 34 of the Act.”

60 Surcharge:-- 1) (Notwithstanding anything contained in any other law for the time being in force) where in the course of an audit under Section 50 or an inquiry under Section 51 or an inspection under Section 52 or Section 53, or the winding up of a society, it appears that any person

who is or was entrusted with the organisation, affairs or management or the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment contrary to the provisions of this Act, the rules or the bye laws, the Registrar himself, or any person specially authorised by him in this behalf, of his own motion or on the application of the committee, liquidator or any creditor or contributor, may inquire into the conduct of such person or officer or servant and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retention, breach of trust, or wilful negligence as the Registrar or the person authorised as aforesaid thinks just:

Provided that no order shall be passed against any person referred to in this sub section unless the person concerned has been given an o0pportunity of making his representation.

2) Any sum ordered under this section to be repaid to a society or recovered as a contribution to its assets may be recovered on a requisition being made in this behalf by the Registrar to the Collector in the same manner as arrears of land revenue.

3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act.

A perusal of the provisions contained in Section 51 makes the position clear that in three different ways, an enquiry into the constitution, working and financial status of a Society can be ordered and those are:

1) A *suo motu* exercise by the Registrar; 2) On an application by the Society to which the Society concerned is affiliated;

3) If not less than one third members of the Committee or when not less than one fifth of the total number of members of the Society seek such an enquiry, the Registrar shall order for such an enquiry. There is no discretion vested in the Registrar for not ordering such an enquiry in the latter two events. However, the Registrar has also been empowered to order for such an enquiry under Section 51 on his own motion, for, when he receives a complaint bringing out the improper management of the affairs of a Society, he is entitled to treat the said complaint as a means of information requiring him to order enquiry into the affairs of the Society. Therefore, the *suo motu* exercise of the Registrar can be preceded by gathering appropriate information. The said information could possibly have been gathered using the departmental mechanism or even otherwise. Therefore, the complaint lodged against the writ petitioner by a couple of members of the Managing Committee of the Society is nothing more than a piece of information brought to the notice of the Registrar, to enable him to decide as to whether an enquiry under Section 51 of the Act is required to be conducted into the affairs of the Society concerned or not, but it shall not be considered as a compulsion thrust upon the Registrar to order for such an enquiry, for, one-third members of the Managing Committee have not asked for it. This is the

distinction which has been brought out by this Court in the case o f **Khadernawazkhanpet Society** (supra) in the following words:

> "The contention of Sri V.Venkatramanaiah, the learned counsel for the petitioner is that in the instant case the Registrar did not purport to take suo motu action but purported only to act on the representation of the Vice President and ex – member of the Society and that he is not legally bound to act upon the representation of the Vice-President and the ex-member, as the representation does not satisfy the requirements of Section 51 of the Act. No doubt, the representation made by the Vice President and ex-member does not satisfy the requirements of Section 51 of the Act, in the sense that it is not an application by not less than 1/3rd of the members of the committee or by not less than 1/5th of the total number of members of the Society. Even so, the Registrar must be deemed to have acted suo motu on the representation made by the Vice President and Ex-member. In the case of an application made by not less than 1/3rd members of the committee or by not less than 1/5th of the total number of members of the Society, the Registrar is bound to act on the said application and hold an enquiry. But where there is no such application satisfying the requirements of Section 51, it is within the discretion of the Registrar whether to take action or not under Section 51 of the Act when it comes to his knowledge otherwise than by way of an application falling under Section 51 that the affairs of the society were not being conducted properly or regularly. In the instant case, the Registrar purported to take action under Section 51 on the basis of the information received by him from the representation made by

> the Vice President and an ex member of the Society. Therefore, it cannot be said that there is any contravention of the provisions of Section 51 or any want of jurisdiction in the Deputy Registrar issuing the impugned proceedings proposing to hold an inquiry under Section 51 of the Act".

I am in respectful agreement with the view expressed in the above case and I do not find any valid or justifiable ground to interfere with the order passed by the Registrar on 5.12.1997.

With regard to the subsequent order passed by him on 10.2.1998 is concerned, he has assigned a reason requiring him to pass such an order. The Officer to whom the job to conduct the enquiry has been entrusted, had not conducted the enquiry and therefore, to stick on to the time stipulation contained in Section 51 of the Act, the Registrar ordered for conducting the enquiry by another Officer. I do not therefore find any reason to interfere with the order passed by the Registrar on 10.2.1998 either. It is hoped that the enquiry which has not been conducted so far, be completed as early as possible, at any rate within a period of two months and be completed as of 31.8.2007.

With this, the writ petition is dismissed. No costs.

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NOOTY RAMA MOHANA RAO.J.

21.6.2007
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[1] 1980 (1) APLJ 319